

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Arun K. Bhattacharya	:	
vs.	:	
RCN Telecom Services of Illinois, LLC	:	13-0481
	:	
Complaint as to service in Chicago, Illinois.	:	

PROPOSED ORDER

By the Commission:

I. Background

On August 19, 2013, pursuant to Section 10-108 of the Illinois Public Utilities Act (220 ILCS 5/10-108) ("the Act"), Arun K. Bhattacharya ("Complainant" or "Mr. "Battacharya") filed a complaint against RCN Telecom Services of Illinois, Inc. ("Respondent" or "RCN")), alleging that Respondent falsely told him his service had been interrupted by an outage in his area, when Respondent had actually disconnected him; that Respondent failed to keep a July 17, 2012 appointment to restore service, stating that Respondent falsely contended that the appointment had been scheduled for July 13, 2012 which Complainant had cancelled; that Respondent falsely stated that Complainant made live contact with Respondent on August 25, 2012, yet Complainant had only sent an e-mail; and that Respondent falsely stated that Complainant's service had been restored by rebooting the system, when his service had actually been restored by someone in Respondent's control room.

Complainant stated that he was claiming damages under 83 Ill. Adm. Code 732.30, plus the amounts incurred in using public pay telephones while his service was out.

Pursuant to notice as required by the rules and regulations of the Commission, a prehearing conference was held in this matter before a duly authorized Administrative Law Judge ("ALJ") of the Commission on September 23, 2013. Respondent appeared by counsel. Complainant appeared pro se. This matter was scheduled for hearing on October 29, 2013. Complainant appeared pro se and testified in his own behalf. He sponsored Exhibit 1, correspondence from Respondent to the Federal Communications Commission, 9/17/12; Exhibit 2, undated e-mail from Respondent to Complainant; and Exhibit 3, a list of the dates and costs of public telephone calls made by Respondent.

Respondent appeared by counsel and presented the testimony of Yvonne Catherine Ingram, who was employed by Respondent's Corporate Escalations

Department during July and August, 2012. Ms. Ingram was located in Wilkes-Barre, PA and submitted her testimony telephonically. She sponsored Exhibit A, correspondence from Complainant to Respondent, 8/2/12; Exhibit B, e-mail from Ms. Ingram to Complainant, 8/7/12; Exhibit C, e-mail from Ms. Ingram to Complainant, 8/8/12; Exhibit D, e-mail from Complainant to Ms. Ingram, 8/11/12; Exhibit E, e-mail from Ms. Ingram to Complainant, 8/13/12; Exhibit F, e-mail from Complainant to Ms. Ingram, 8/18/12; Exhibit G, e-mail from Complainant to Ms. Ingram, 8/18/12; Exhibit H, letter from Complainant to Ms. Ingram, 8/18/12; Exhibit I, e-mail from Ms. Ingram to Complainant, 8/23/12; Exhibit J, e-mail from Complainant to Ms. Ingram, 8/25/12; Exhibit K, e-mail from Ms. Ingram to Complainant, 8/25/12; Exhibit L, letter from Complainant to Ms. Ingram, 8/25/12.

At the conclusion of the hearing on October 29, 2013, the parties' exhibits were admitted into evidence and the record was marked "Heard and Taken".

II. Complainant Position

Complainant testified that about the third week of May 2012, he requested landline service from Respondent, to be effective June 1, 2012. The requested service was installed, (773) 744-0682, but as of midnight July 12, 2013, it ceased. He testified that when he called Respondent on July 13, 2012, Respondent originally scheduled someone to come out on July 17, 2012, but at Complainant's request the appointment was expedited to July 13. Complainant stated that no one from Respondent appeared on either day. He followed his request with multiple e-mails and Respondent replied that someone would get back to him, but no one did.

Complainant sponsored Exhibit 1, which he testified shows that Respondent failed to appear on July 17, 2012 and was the cause of the damages he incurred. He asserted that language in the last paragraph stating, "(Complainant) had a trouble call scheduled for 7/17/12, and it was expedited to 7/13/12. A technician was dispatched on 7/13/12, but (Complainant) canceled the appointment at the door", was incorrect.

Complainant testified that Respondent had informed him his service interruption was due to an outage in his area. His service remained interrupted until 4:00 pm on August 25, 2012, when he was able to get a dial tone. He said he was never informed by Respondent that the outage had been resolved. He testified that on August 26 or 27, 2012, he informed Respondent that he was dissatisfied with their service and wished to discontinue it.

Complainant testified that while his service was out, he was compelled to use public pay telephones in locations as various as DePaul University in the loop, Northwestern University in Evanston, and the nearest CTA station. He stated that the difficulty in making calls was compounded by not being able to receive calls, including those from prospective employers. He sponsored Exhibit 3, a list containing the dates and cost of public pay telephone calls he made while his service was out, totaling \$67.50 in the left-hand column and \$50.50 in the right hand column. He testified that

when he made a call, he wrote down the date and cost on a separate piece of paper and later entered the information into his computer. Complainant said that he did not preserve the original notes and that he suffered no other damages.

He testified that during the period he had no service, he was still billed by Respondent and paid the charges because he paid a fixed amount, \$64.00 or \$65.00, each month in advance. (Tr. at 46, 52). Overseas calls were extra. He testified that he did not have copies of bills he paid while his service was out. Complainant stated that he did not recall the exact date he last paid his bill, but estimated that it was July 31, 2012. Respondent stated that six weeks after August 25, he received a check from Respondent for \$64.00, which was a credit for the period July 13, 2012 to August 25, 2012.

Complainant testified that he never had e-mail service from Respondent, and he had Respondent's internet service on June 1, 2012, but canceled it on June 3, 2012. He had no internet service from Respondent from July 12, 2012 to August 25, 2012 and never had cell phone service from Respondent. He relied solely on Respondent's telephone service and public library computers for all outside contact. He stated that he made local and long distance calls during the work week.

Complainant testified that he withdrew a federal lawsuit against Respondent and had a state court lawsuit against Respondent dismissed by summary judgment. He stated that, in the past ten years, he has filed ten lawsuits against Respondent. He has also filed two or three other complaints with the Commission in the last five years. Complainant asserted that the service outage he experienced from July 12, 2012 to August 25, 2012 was entirely Respondent's fault.

Complainant stated that he generally was frustrated and inconvenienced by Respondent's failure to restore his service before August 25, 2012. He reiterated that he was claiming the amount of the phone calls shown on Exhibit 3, plus all other damages available under Section 732.30.

III. Respondent Position

Testimony of Ms. Ingram

Ms. Ingram testified that she had been first made aware of the complaint in this Docket around August 5, 2012, from an e-mail sent to her with Ex. A attached. She testified that she reviewed the computer file of Complainant's account, looking for any notation of when he might have spoken to someone, or any work orders that may have been placed into the account for service or installation issues. Prior to August 2, 2012, there were three or four calls and/or e-mails from Complainant.

Ms. Ingram testified that she telephoned Complainant on both August 6 and August 7, 2012, and also e-mailed him on August 7 (Respondent Ex. B). She testified that Respondent Ex. B contains her direct dial number, which she has never before or

since given to a complainant. However, in Complainant's case she wanted to ensure that he could contact her so she could assist him in setting up an appointment for a technician to visit his premises and resolve his phone issues.

Ms. Ingram testified that Respondent Ex. C is an e-mail to Complainant dated August 8, 2012, which served as a follow-up to the phone call she made to him the same day. She stated that he responded to her for the first time in an e-mail dated August 11, 2012. (Respondent Ex. D). Ms. Ingram replied to Complainant in an e-mail dated August 13, 2012 (Respondent Ex. E), requesting that he call her to set up an appointment for a technician's visit.

Ms. Ingram stated that Complainant responded to her August 13, 2012 e-mail with an August 18, 2012 e-mail (Respondent Ex. F), but failed to give a date and time for a technician's visit. Ms. Ingram stated that Complainant also sent her two letters each dated August 18, 2012 (Respondent Exs. G and H), both of which she responded to with an August 23, 2012 e-mail that referenced his Lifeline service. (Respondent Ex. I). She said that it was her understanding that in much of his correspondence, Mr. Battacharya had complained more often about his Lifeline service than getting his phone service restored. However, she put the Lifeline issue aside in her August 23 e-mail, stating that the goal was to get his phone service restored and for him to contact her to set up a technician's appointment.

Ms. Ingram testified that in an August 25, 2012 e-mail from Complainant, he gives her for the first time since contact began on August 5, 2012, the dates and times he would be available for a technician's visit. (Respondent Ex. J). In her reply e-mail sent on August 25 at 12:07 pm, approximately one-half hour after Complainant sent his e-mail, Ms. Ingram set the date and time for a technician's visit. She was able to do so quickly because she had contacted the local area, which was aware of the issue and was waiting for a time to go out. It was Ms. Ingram's understanding that a technician was at Complainant's home approximately three hours later.

Ms. Ingram testified that when she returned to work on August 27, 2012, she checked the electric account to ensure that repairs to Complainant's service had been successfully completed. The electric account disclosed that Complainant's modem needed to be reset. She estimated the technician reset the modem in about five minutes. Ms. Ingram stated that she also called Complainant on August 27, 2012 for the first time during this entire process to determine that the repairs were successfully completed and to inform him that RCN would grant him a credit for the services that were out and he was also offered an additional \$25.00 credit for his frustration. She stated that Complainant did not have any out-of-pocket expenses to RCN for the 43 days his service was interrupted.

Ms. Ingram testified that Complainant informed her that the credit offer was too late and he threatened to sue Respondent. She described him as agitated, unpleasant and he canceled his service at that time. She was unsuccessful in her attempt to persuade him keep his RCN service.

Ms. Ingram testified that Complainant sent her a letter (Respondent Ex. L) in which he again made Lifeline an issue. She stated that neither she nor RCN had any personal animosity toward Complainant and that she understood his frustration, however it was not RCN's fault that it took 43 days to restore service. She believed that Complainant was partly to blame for the delay because he did not respond timely with possible dates for an appointment. His service could have been restored more quickly.

Ms. Ingram testified that all of her contacts with Complainant were made in an attempt to repair his phone service by getting a technician out to his premises. In none of his e-mails or his telephone calls did Complainant ever provide her with a date and time for an appointment. She testified that she regularly checks the voice mail on her direct dial line and her mail box is never full. She has never experienced being unable to receive messages left for her.

Ms. Ingram testified that she attempted to call Complainant on August 6, 2012, but it went to his voice mail, which was still active despite his service being out. She testified that her main concern was getting his service restored, but she did not know if that was Complainant's concern or if it was the Lifeline service.

Ms. Ingram testified that she did not recall if Complainant left messages for her on August 17, 2012. She testified that she made the appointment for August 25 by contacting the local office and having the technician go to complainant's home according to the e-mail she had received from him. She did not know how many technicians came to his home, but she did know that they reset the modem because that was the answer they gave to the problem. She did not know if the technician made any calls to RCN at the time.

IV. Commission Analysis and Conclusions

The Commission notes that Respondent's witness testified telephonically from its office in Wilkes-Barre, PA. Complainant did not object.

All transcript citations are taken from the October 29, 2013 hearing.

Mr. Bhattacharya's complaint boils down to two issues. He first alleges that Respondent's failure to respond to his requests to dispatch a technician caused interruption to his telephone service from July 12, 2012 to August 25, 2012, for which he is entitled to credits under Section 732.30. He also alleges that while his service was disrupted due to RCN's lack of response, he was compelled to use pay telephones, costing him a total of \$118.00.

It is undisputed that Complainant called Respondent for service on July 13, 2012, the day the outage began. Complainant testified that he sent e-mails every two or three days requesting service, and received e-mails stating that someone would get back to him, but no one ever did. (Tr. at 38). Complainant also sponsored Exhibit 1, a letter from Respondent to the FCC, which states in part, "Mr. Bhattacharya had a trouble call

scheduled for 7/17/12, and it was expedited to 7/13/12. A technician was dispatched on 7/13/12, but Mr. Bhattacharya canceled the appointment at the door.” Respondent conceded that no one from RCN visited Complainant’s premises on July 13, 2012 in response to his call. (Tr. at 37, 48, 75-76).

Respondent’s witness first became familiar with Complainant’s service issues on or about August 5, 2012. (Tr. at 79). There is no testimony or other evidence to establish that Respondent made any attempt to address Complainant’s service interruption between July 13, 2012 and August 5, 2012. Respondent’s evidence is replete with e-mails from its witness to Complainant with regard to scheduling technician visits (Respondent’s Exs. B, C, E, I and K), but none of the e-mails are dated prior to August 7, 2012. Respondent’s witness also acknowledged twice that Respondent’s service had been interrupted for a 43-day period. (Tr. at 99, 102).

The Commission finds that Respondent’s witness was diligent in her efforts to resolve Complainant’s service interruption from August 5, 2012 to August 25, 2012. However, Complainant was without service for 43 days and there is no evidence that Respondent began to make any effort to solve Complainant’s problem until August 5, 2012. Moreover, whatever difficulties Respondent encountered after August 5, 2012 in finding a mutual date with Complainant to resolve his service disruption are not excused by 83 Ill. Adm. Code 732.20 or 732.30. The Commission finds that Respondent’s failure to begin to address Complainant’s basic local exchange service interruption until August 5, 2012, and its failure to resolve the interruption for 43 total days, to be unacceptable.

Section 732.20 contains the requirements to which a telecommunications carrier must adhere with regard to installation and restoration of basic local exchange service. Section 732.30 governs customer credits for violations of the standards set forth in Section 732.20. Section 732.20(b) requires a telecommunications carrier to “(R)estore basic local exchange service for a customer within 24 hours after receiving notice that a customer is out of service, including those service disruptions that occur when a customer switches existing basic local exchange service from one carrier to another.” The Commission regards Respondent to be in clear violation of this provision.

Section 732.30

A telecommunications carrier shall credit customers for violations of the basic local exchange service quality standards described in Section 732.20 of this Part. The credits shall be applied on the statement issued to the customer for the next monthly billing cycle following the violation or following the discovery of the violation and shall be identified as a “Service Quality Credit” or “S.Q. Credit”. The telecommunications carrier may provide additional detail regarding the service quality credit if it wishes.

a) If a carrier fails to repair an out-of-service condition for basic local exchange service within 30 hours, the carrier shall provide a credit to

the customer. If the service disruption is for over 30 hours but less than 48 hours, the credit must be equal to a pro-rata portion of the monthly recurring charges for all local services disrupted. A pro-rata portion shall be based upon a 30-day month. If the service disruption is for more than 48 hours, but not more than 72 hours, the credit must be equal to at least 33% of one month's recurring charges for all local services disrupted. If the service disruption is for more than 72 hours, but not more than 96 hours, the credit must be equal to at least 67% of one month's recurring charges for all local services disrupted. If the service disruption is for more than 96 hours, but not more than 120 hours, the credit must be equal to one month's recurring charges for all local services disrupted. For each day or portion thereof that the service disruption continues beyond the initial 120-hour period, the carrier shall also provide either alternative phone service or an additional credit of \$20 per day, at the customer's option. The customer shall be notified that he/she may choose alternative telephone service or an additional credit of \$20 per day when the service disruption continues beyond the initial 120 hour period so the customer can exercise his/her option. In the absence of an election by the customer, the customer shall receive \$20 per day."

The Commission notes that Complainant received a check for \$64.00 from Respondent six weeks after August 25, 2012, to compensate him for the period of the outage. (Tr. at 67). As Complainant paid \$64.00 per month for service and service was disrupted for 43 days, the Commission finds that Complainant remains uncredited for 13 days. Section 732.30(a) contains the formula for credits that Respondent is required to provide to Complainant for disrupted service over specific periods of time. The Commission finds that Complainant should be credited by the Respondent precisely as set forth in Section 732.30(a). This section grants the carrier 30 hours to repair service. There are 720 hours in a 30-day month. Complainant should be credited for 18 (30-48 hour period) of 720 monthly hours that his service was disrupted, 33% of recurring charges for disruption for 48-72 hours, 67% of recurring charges for disruption for 72-96 hours, one month's recurring charges for disruption for 96-120 hours, and \$20.00 per day for the disruption in excess of 120 hours, as follows:

30-48 hrs. disrupted	$720/18=.025 \times 64.00$	=	1.60
48-72 hrs. disrupted	$.33 \times 64.00$	=	21.12
72-96 hrs. disrupted	$.67 \times 64.00$	=	42.88
96-120 hrs. disrupted one month		=	64.00
over 120 hrs. disrupted 8 days	8×20.00	=	160.00
			<hr/> 289.60

Since Complainant no longer has service with Respondent, the credit should be applied to Complainant's credit card or be presented in the form of a check.

Complainant also introduced Exhibit 3 which purports to show that he was compelled to spend \$118.00 at public telephones during the period of disruption. While the Commission has no basis to doubt that Complainant actually incurred these expenses, it finds that such sums are not recoverable under Section 732, nor under any other Section of the regulations or the Act.

Findings and Ordering Paragraphs

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) RCN Telecom Services of Illinois, LLC is an Illinois limited liability company engaged in furnishing utility services in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105);
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) on August 19, 2013, Arun K. Bhattacharya filed a complaint against Respondent alleging that Respondent falsely told him his service had been interrupted by an outage in his area, when Respondent had actually disconnected him; that Respondent failed to keep a July 17, 2012 appointment to restore service, stating that Respondent falsely contended that the appointment had been scheduled for July 13, 2012 which Complainant had cancelled; that Respondent falsely stated that Complainant made live contact with Respondent on August 25, 2012, yet Complainant had only sent an e-mail; and that Respondent falsely stated that Complainant's service had been restored by rebooting the system, when his service had actually been restored by someone in Respondent's control room;
- (5) the complaint should be granted in part and denied in part;
- (6) the evidence shows that Complainant's service was disrupted on July 13, 2012 and remained so until August 25, 2012, a total of 43 days;
- (7) Complainant was credited \$64.00 for one month's service;
- (8) Complainant should be credited an additional \$289.60 for 13 days that his service was disrupted, calculated pursuant to 83 Ill. Adm. Code 732.30(a);
- (9) Complainant's request for credit for \$118.00 incurred using pay telephones should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Arun K. Bhattacharya against RCN Telecom Services of Illinois, LLC, for a credit of \$289.60 calculated pursuant to 83 Ill. Adm. Code 732.30(a), is granted.

IT IS FURTHER ORDERED that Complainant's request for credit of \$118.00 incurred using pay telephones, is denied.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	February 25, 2014
BRIEFS ON EXCEPTIONS DUE:	March 11, 2014
REPLY BRIEFS ON EXCEPTIONS DUE:	March 18, 2014

John T. Riley,
Administrative Law Judge